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February 27, 2023

Via ECF

Hon. Laura Taylor Swain  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: *Aldana v. GameStop, Inc.*, Case No. 22-cv-7063 (LTS)

Dear Chief Judge Swain:

GameStop provides this brief response to Plaintiffs' counsel's February 23, 2023 letter, because counsel therein makes arguments that go beyond the limited scope of *Martin v. Meredith* and could have been raised in its Opposition to GameStop's Motion to Dismiss. See Letter from P. Fraietta at 2 (engaging in further arguments on the separate "video tape service provider" requirement). GameStop has addressed why video games are not "similar" to content found in video tapes under any theory—cut scenes-based or otherwise. See Opening Mem. at 1-12; Reply at 1-5. GameStop has also explained that television series like Ken Burns's *Baseball* qualify as "similar audio visual materials," such that disclosure of such a purchase would identify the "specific video materials or services" obtained. 18 U.S.C. § 2710(a)(3). The same is not true of video games. For full analysis of these issues, GameStop directs the Court simply to the parties' briefs under submission.

Respectfully submitted,

*/s/ Sheri Pan*

Sheri Pan

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All counsel of record (via ECF)